TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~150.~~ 2246

FRANK TREBILCOCK, PLAINTIFF IN ERROR,

vs.

BENJAMIN WILSON AND ELIZABETH WILSON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

FILED JUNE 16, 1870.

SUPREME COURT OF THE UNITED STATES.

No. 459.

FRANK TREBILCOCK, PLAINTIFF IN ERROR,

vs.

BENJAMIN WILSON AND ELIZABETH WILSON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

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1 *Petition for writ of error to the supreme court of the State of Iowa, in the case of—*

BENJAMIN WILSON AND ELIZABETH WILSON
vs.
FRANK TREBILCOCK.

In district court of the State of Iowa for the county of Van Buren.

Bill in chancery to compel the acceptance of U. S. treas. notes, tendered in payment of a note given in 1861, and the cancellation of a mortgage given to secure the same, the said note specifying the payment was to be in specie.

Petition.

To the Honorable Salmon P. Chase, Chief Justice of the United States:

Your petitioner, Frank Trebilcock, defendant in the foregoing entitled cause, and plaintiff and appellant herein, comes and shows to your honor here the following facts, to wit:

2 1st. That the plaintiff in the foregoing cause, Benjamin Wilson, made and delivered to your petitioner his promissory note for $900 00, for the loan of said sum of money in specie, on the 25th day of June, 1861, to be paid in one year from its date, with ten per cent. interest. And to secure the payment of said note, he, with his wife, Elizabeth Wilson, above named plaintiff, executed and delivered their mortgage deed to your petitioner, the said note stipulating that it should be paid in "specie."

2nd. The said note was not paid at its maturity, to wit, June 25th, 1862, but no action was brought to enforce its payment. But on the 28th day of February, 1863, the above-named Wilson tendered the amount of said note in U. S. legal-tender treasury notes, commonly called "greenbacks." Your petitioner refused to receive said notes in payment unless made equal to "specie"—the obligation of the note. On the 20th day of July, 1865, the said debtors and mortgagees commenced

3 proceedings in equity in the district court of the State of Iowa, for the county of Van Buren, to compel your petitioner to take the tender made as aforesaid, on the 28th of February, 1863, and cancel the mortgage given to secure said indebtedness. In their petition to said court setting up said tender as a satisfaction of their indebtedness, your petitioner demurred to their said petition on the ground that the tender was not made at the maturity of the note; on the ground that the contract required payment in specie, and the tender pleaded was not that; on the ground that the contract was made before the passage of the legal-tender act, and the law did not apply to or affect contracts made before the law and before it was even in contemplation; and on the further ground, that if the said law was construed to apply to contracts made before its passage, it was in violation of the federal Constitution and therefore void, because it impaired the obligations of

4 contracts; and for the further cause that there was no authority in the Constitution to make anything but gold and silver a legal tender in payment of debts; but that, if the "legal-tender law was held to be valid, then the tender, to be good, must be equal in value to the obligations of the contract.

The court overruled the demurrer of your petitioner, and entered its judgment that the tender made on the 28th of February, 1863, of treas-

ury notes at their face to the amount then due, should be accepted, and that the debt was paid thereby, and ordered the mortgage cancelled.

Your petitioner appealed from said judgment of the district court to the supreme court of the State of Iowa, the highest judicial tribunal in the State in which a decision on the case could be had; which court, on the 10th day of December, 1867, affirmed the judgment of the said district court.

3rd. Your petitioner shews to your honor that the said judgment was against his rights in the premises; that it was rendered by the highest judicial tribunal in the State in which a decision could be had;
5 that the said decree was a final adjudication of his rights in the premises, and that his demurrer to plaintiff's petition in the district court called in question the extent of the application of "legal-tender act" of Congress, and also its constitutionality, all of which were decided adversely to your petitioner and against his rights, and that the same remains of record in the sp. court of Iowa. He therefore prays your honor to direct a writ of error to issue to the said supreme court of the State of Iowa, where the record of said judgment and decree remains, and that the said cause be heard by the Supreme Court of the United States, and a decision rendered in accordance with the Constitution and the decisions of said court upon this and similar questions. And, as in duty bound, will ever pray.

FRANK TREBILCOCK,
Appellant and plaintiff herein.
By CHARLES BALDWIN,
GEO. W. McCRARY,
His Attorneys.

UNITED STATES OF AMERICA, *ss:*

6 The President of the United States, to the honorable the judges of the supreme court of the State of Iowa, greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Iowa, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Frank Trebilcock, appellant, and Benjamin Wilson and Elizabeth Wilson, appellees, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision
7 was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Frank Trebilcock, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court

to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-nine.

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

Allowed by

S. P. CHASE,
Chief Justice United States.

Issued 28th May, 1870.

8 The United States of America to Benjamin Wilson and Elizabeth Wilson, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Iowa,

Wherein Frank Trebilcock is plaintiff in error, and you are defendant in error, to show cause, if any there be, why decree rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this twenty-eighth day of May, in the year of our Lord one thousand eight hundred and seventy.

S. P. CHASE,
Ch. Justice.

9 This notice came into my hands for service on the 1st day of June, 1870, and I served the same by reading it to Benjamin Wilson and Elizabeth Wilson, and delivering to them a true copy of the same at Keosauqua, Van Buren County, Iowa, on the 3d day of June, 1870.

GEO. W. SOMMERVILLE,
Sheriff Van Buren County, Iowa.

Fees .88. Fees paid by defendant.

On this 6th day of June, in the year of our Lord one thousand eight hundred and seventy, personally appeared George W. Sommerville, sheriff, before me, the subscriber, James W. Latham, clerk of the district court in and for Van Buren Co., Iowa, and makes oath that he delivered a true copy of the within citation to Benjamin Wilson and Elizabeth Wilson on the 3d day of June, 1870.

GEO. W. SOMMERVILLE,
Sheriff.

Sworn to and subscribed the 6th day of June, 1870.
[SEAL.] JAMES W. LATHAM,
Clk D. C.

10 Know all men by these presents, that we, Frank Trebilcock, as principal, and George W. McCrary, as surety, are held and firmly bound unto Benjamin Wilson & Elizabeth Wilson in the full and just sum of five hundred dollars, to be paid to the said Benjamin Wilson & Elizabeth Wilson, their certain *certain* attorney, executors, admin-

istrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this twenty-first day of May, in the year of our Lord one thousand eight hundred and seventy.

Whereas lately, at a supreme court of the State of Iowa, in a suit depending in said court between Frank Trebilcock and Benjamin & Elizabeth Wilson, judgment was rendered against the said Tribilcock, and the said F. Tribilcock having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Benjamin Wilson & Elizabeth Wilson, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next.

Now, the condition of the above obligation is such that if the said Frank Trebilcock shall prosecute said writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

FRANK TREBILCOCK, [L. S.]
By GEO. W. McCRARY, [L. S.]
His Att'y.
GEO. W. McCRARY. [L. S.]

Sealed and delivered in presence of—
JAS. H. McKENNEY.

Approved by—

S. P. CHASE,
Ch. Justice.

10½ DISTRICT OF COLUMBIA, *City of Washington:*

Geo. W. McCrary, surety on the within bond, being duly sworn on oath, says that he is well worth, in unincumbered property, over and above all his indebtedness and exemptions, more than the sum of fifteen hundred dollars, ($1,500.)

GEO. W. McCRARY.

Subscribed & sworn to before me this 27 day of May, A. D. 1870.
[SEAL.] JAS. H. McKENNEY,
Notary Public, Washington Co., D. C.

11 STATE OF IOWA, *Van Buren County, ss:*

Be it remembered that at a regular term of the district court of said State, in and for said county, begun & held in the city of Keosauqua on Monday, 3d day of Sept., 1866, Hon. H. H. Trimble being the sole judge presiding, and on the 2d day of said term, it being the 4th day of the said month, the following, among other proceedings, were had, to wit:

Dist. court, Van Buren County, Iowa.

BENJAMIN WILSON & ELIZABETH WILSON
vs.
FRANK TREBILCOCK. } Decree No. 5235.

This day came pl't'ffs, by Knapp & Wright & H. Strong, their att'ys, and def't came also, by F. Semple & Charles Baldwin, his att'ys, and this cause came on for final hearing upon the pleading and exhibits on

file, and the documentary evidence adduced, and the court having examined and heard the same, and having heard the argument of counsel, and being fully advised in the premises, finds that the equity of the case is with plaintiffs, and that the allegations in plaintiff's bill
12 have been fully proven by competent testimony. That on the 28th day of February, A. D. 1863, pl't'ff Benjamin Wilson was indebted to defendant in the sum and amount of $960\frac{75}{100}$, for which def't held a promissory note for $900, of date of June 25th, 1861, on which one year's interest had been fully paid before maturity, secured by a mortgage executed by pl't'ff to def't upon the east half of the southeast quarter of sec. 26, and the northwest quarter of the southwest quarter of sec. 25, except about five acres sold out of the northeast corner of said forty acres, being about thirty-five (35) acres, all in township sixty-nine (69) north of range ten (10) west, in Van Buren County, and State of Iowa, dated June 25th, A. D. 1861, and recorded in mortgage book F, pages 9 & 10 of mortgage records of said county. The court further finds that on the said 28th day of February, A. D. 1862, the pl't'ff, Benjamin Wilson, did tender to the said def't, in person, in the said county, the full amount due on said note, to wit, $960\frac{75}{100}$ dollars, which the said defendant refused to receive, which tender was fully and legally made in United States notes, commonly known & designated as "greenbacks," and which the court finds was a legal tender. The court further finds that def't made no objection to said tender, except that the same
13 was not made in gold. The court further finds that pl't'ff paid into this court at the date of the bringing of this suit for the def't the full amount so tendered, & has ever since been able, ready, and willing to pay the said sum to def't.

It is therefore further ordered, adjudged, & decreed by the court that said mortgage be and is fully cancelled & held for naught, and the said land is released from all right, interest, title, or equity of def't to, in, or upon the same under the said mortgage, and that there is due def't the sum of $960\frac{75}{100}$ dollars, and no more, which is now in this court for def't. It is further ordered that def't, within ten days from the signing of this decree, enter full satisfaction upon the record of said mortgage, & that in case his neglect or failure to do so, that John A. Miller, who is hereby appointed a special commissioner for that purpose, is authorized and empowered to enter satisfaction upon the said record of said mortgage, & that pl't'ffs have & recover of def't their costs of suit, taxed at $18\frac{95}{100}$.

Sept. 4th, 1866.

(Signed) H. H. TRIMBLE, *Judge.*

STATE OF IOWA, *Van Buren County, ss:*

14 District court Van Buren County, Iowa.

BENJAMIN WILSON & ELIZABETH WILSON *vs.* FRANK TREBILCOCK. } Decree.

I, Jas. W. Latham, clerk of the district court in & for said county & State, do hereby certify that the transcript of the supreme court of said State, in the above entitled cause, is now before me, and it appearing by said transcript that the final judgment of the district court of Van Buren County, on the petition of plaintiff in said cause, was appealed to the supreme court of the aforesaid State of Iowa, and it further ap-

pearing, by said transcript, that the said judgment of the district court was affirmed by the said supreme court; and it further appearing from said transcript that there is no copy of said judgment of the district court certified or embraced therein, therefore, at the request and upon the direction of def'ts att'y, I hereby certify the foregoing & hereunto attached to be a true and complete transcript of said judgment
15 of the district court of Van Buren County, Iowa, in the said cause, as fully as the same now remains of record in my office. And I further certify that the records in my office show that the ruling of the court upon the demurrers as set out in said transcript, and the foregoing judgment of the said court, were made and entered on the 4th day of Sept., 1866, instead of Sept. 4, 1867, as appears in said transcript.

Witness my hand and the seal of our said district court, affixed at the city of Keosauqua, this 15th day of May, A. D. 1870.

[SEAL.] JAS. W. LATHAM,
Clerk Dist. Court.

(Indorsed:) Benjamin Wilson & Elizabeth Wilson vs. Frank Trebilcock. Trascript of judgment entry dist. court Van Buren Co., Iowa.

16 Be it remembered that heretofore, to wit, on the 24th day of October, A. D. 1867, there was filed in the office of the clerk of the supreme court of the State of Iowa a transcript in words and figures as follows, to wit:

STATE OF IOWA, *Van Buren County:*

Pleas before the district court of Iowa, at a term begun and holden in the county of Van Buren, on the first Monday of September, A. D. 1866, before the Hon. H. H. Trimble, judge of the second judicial district of the State of Iowa.

BENJAMIN WILSON & ELIZABETH WILSON
vs.
FRANK TRIBILCOCK. } Petition in equity.

Be it remembered that heretofore, to wit, on the 20th day of July, 1865, a petition was filed in the office of the clerk of the district court in and for the county of Van Buren, in the words and figures following, to wit:

In dist. court, September term, 1865.

STATE OF IOWA, *Van Buren County:*

BENJAMIN WILSON & ELIZABETH WILSON
vs.
FRANK TRIBILCOCK. } Petition in equity.

17 To the district court for Van Buren County, Iowa:

Your petitioners, the above named plaintiffs, Benjamin Wilson and Elizabeth Wilson, show to the court herein, that on the 25th day of June, 1861, the said plaintiff, Benjamin Wilson, being indebted to the said Frank Tribilcock, who your petitioners make a party defendant to this petition, in the sum of nine hundred dollars, executed and delivered to said defendant his promissory note of that date, for the said sum of nine hundred dollars, payable to the said Tribilcock one year from the date thereof, with ten per cent. interest from the date thereof, a copy

of which said note, however, your petitioners are unable to give, because it is the property of, and held by and in the possession of said defendant, subject to the rights and equities of your petitioners, and they ask that said defendant may answer specifically whether or not he has said note, and holds the same, and that he may be required to produce the same in court at the trial of this cause, to be subject to the order and decree of the court for the reasons hereinafter set out.

2d. Your petitioners further show that for the purpose of better securing the paying of said note they, on the day of the date of the same, executed and delivered to the said defendant a mortgage upon the east half of the southeast quarter of section twenty-six, and the northwest quarter of the southwest quarter of section twenty-five, (except about five acres sold out of the northeast corner of said forty acres,) be-
18 ing about thirty-five acres, all in township sixty-nine north, of range ten west, in Van Buren County, Iowa, a copy of which said mortgage is made part of this petition, as Exhibit "A," and which will be by the plaintiffs used as evidence in this cause.

Your petitioners show that said mortgage was duly recorded in the office of the recorder of said county on the 26th day of June, 1861, in mortgage book "F," as will appear from said copy and certificate of said recorder, as part of said Exhibit "A," and the same so now remains of record and unsatisfied.

Your petitioner show that they are the owners of said land, the said Benjamin Wilson owning the same in fee, and the said Elizabeth, as the wife of said Benjamin, having an inchoate right of dower in the same.

3d. Your petitioner further show that on the 28th day of February, 1863, the said Benjamin Wilson, at the residence of the said defendant, in Van Buren County, Iowa, offered to pay, and then and there tendered the said defendant the full amount due the said defendant from said plaintiff, Benjamin Wilson, upon said note—ninety dollars, interest for one year having been promptly paid on said note, both principal and interest, said money so offered and tendered being United States legal tender treasury notes, commonly called greenbacks; but the said defendant refused to accept the same as payment of the whole or any part of said money due upon said note, because he had money enough
19 and did not want it, and because the said money was not in kind what the said contract or note demanded or called for, or what by the said note the said defendant Benjamin undertook and promises to pay the same in, the said defendant claiming that the same was payable only in gold or silver coin.

4th. Your petitioner show and aver that they have, ever since the making of said tender as aforesaid, kept and held said money so tendered ready to pay to the said defendant, and subject always to his call or notice, and they now bring the same into court for the purpose of such tender and payment.

Your petitioner therefore prays that the said defendant may be required, by proper order and decree of this court, to release and discharge said mortgage upon the proper book as required by law, upon the payment of mortgage, and that a commissioner may be appointed by the court, authorized and empowered to enter such satisfaction and discharge of record in the event of the neglect or refusal of said defendant to comply with said order as aforesaid, and that the plaintiffs may have and recover their costs in this suit expended of the said defendant.

KNAPP & WRIGHT,
Pl'ffs' Attornies.

20 EXHIBIT "A."

For the consideration of nine hundred dollars, the receipt whereof is hereby acknowledged, we, Benjamin Wilson and Elizabeth Wilson, do hereby sell and convey to Frank Tribilcock the following described real estate, to wit: the east half (½) of southeast quarter (¼) of section twenty-six, (26,) and the northwest quarter (¼) of the southwest quarter (¼) of section twenty-five, (25,) except about five acres sold out of the northeast corner of said forty acres, leaving thirty-five acres, all in township sixty-nine north, of range ten west, in Van Buren County, and State of Iowa; and we warrant the title thereto against the lawful claims of all persons whomsoever. The above sale is upon this condition, to wit:

Whereas the said Benjamin Wilson has this day executed to the said Tribilcock his promissory note, bearing even date herewith, due one year after date, for the sum of nine hundred dollars, with ten per cent. interest from date, payable in specie, said note being payable to the order of the sad Frank Tribilcock at Keosauqua, Iowa:

Now, if the said Benjamin Wilson shall well and truly pay said promissory note, and the interest that may accrue thereon, at maturity of said note, and according to the terms and tenor thereof, then the above sale to be void, otherwise to be and remain in full force and effect.

Dated this 25th day of June, A. D. 1861.

BENJAMIN WILSON.
ELIZABETH WILSON.

21 THE STATE OF IOWA, *Van Buren County, ss:*

I, George F. Wright, a notary public in and for the county and State aforesaid, do hereby certify that Benjamin Wilson and Elizabeth A. Wilson, personally known to me to be the identical persons whose names are affixed to the foregoing mortgage deed as grantors thereto, and that on this day said grantors personally appeared before me and acknowledged the execution of said mortgage deed to be their voluntary act; and

In witness whereof I have hereunto set my hand and affixed my seal notarial this 25th day of June, A. D. 1861.

[L. S.] GEORGE F. WRIGHT,
Notary Public.

Filed for record June 26th, 1861, at 3 o'clock p. m., and is duly recorded in mortgage book "F," page Nos. 9 & 10.

STATE OF IOWA, *Van Buren County, ss:*

I, Edwin Goddard, recorder in and for the county aforesaid, do hereby certify that the foregoing is a true and perfect copy of a mortgage deed now of record in my office in said county, in mortgage record book "F," and pages No. 9 & 10 thereof, and that this copy has been carefully compared with said original, and is correct copy thereof.

22 Given under my hand and official signature this 18th day of July, A. D. 1865.

EDWIN GODDARD,
Recorder.

A true copy.—Attest:

KNAPP & WRIGHT,
Plff's Att'ys.

And afterwards, to wit, on the 21st day of September, A. D. 1865, there was filed in the office the following demurrer, in words and figures following, to wit:

In district court of said county, Sept. term, 1865.

STATE OF IOWA, *Van Buren County.*

BENJAMIN WILSON & ELIZABETH WILSON
vs.
FRANK TRIBILCOCK. } In equity.

And now comes the defendant herein and demurs to plaintiff's petition in this case, and for cause of demurrer sets down the following:

1st. The petition shows upon its face that the cause of action is based upon a note and mortgage made by plaintiffs to defendant, which they seek to have discharged by this court; that by their contract the note could only be discharged by payment of the amount due thereon in gold; that the note was due on the 25th day of June, 1862, and
23 was payable at Keosauqua. The petition also shows, as a reason for this court to discharge plaintiffs of their obligation to defendant, that on the 28th day of February, 1863, they tendered to defendant, at his residence, the amount of said note in United States treasury notes. Such a tender is not good; it is not according to the obligation of the note sought to be discharged by this proceeding; it was not made at the time said note was due; it was not made at the place where such note was payable, payment of said note having never been demanded, and was not demanded at that time. Under these circumstances defendant was not required to take such tender, unless satisfied with the time when it was made, with the place where it was made, and with the thing or property and amount tendered.

2d. The petition asks the aid of this court for the reason that petitioners tendered the amount of the note described in the petition in U. S. treas. notes. Such tender is not good. There is no law of this State or of the United States making anything but gold and silver a legal tender in discharge of the contract set out in the petition. This contract was entered into on the 25th day of June, 1861. The law of Congress making U. S. treas. notes a legal tender in payment of debts does not apply to this contract, because it was not enacted until long after this contract was entered into, to wit, on the 25th day of February, 1862. To apply this law to this contract would be to make
24 it retrospective law—a law impairing the obligation of contracts, in violation of the Constitution of the United States and of this State. The law of Feb. 25th, 1862, commonly called the legal-tender law, cannot be construed to apply to contracts entered into before its passage or in contemplation of its passage. Any other construction would make the law repugnant to the Constitution of the U. S. and of this State, repugnant to equity, repugnant to law, and repugnant to law and justice.

The law of Feb. 25th, 1862, will not bear so obnoxious a construction; therefore the tender relied upon in this case is not good.

3d. The tender pleaded in the petition, and upon which petitioners rely to be discharged of their obligation, is insufficient in that the amount so tendered was the amount due on the note in gold, when treas. notes were at a greatly depreciated value. Such tender is inequitable, and a court of equity will not sustain nor enforce an inequitable transaction. Before the tender can be held good, it must be an amount

of treas. notes equal in value to the gold or silver due on the note at the time and in accordance with the terms of the contract.

BALDWIN, SAMPLE & KINLEY,
Att'ys for Def't.

25 And afterwards, to wit, on the 11th day of September, A. D. 1867, the following record entry was made, in words and figures following, to wit:

TUESDAY, *September 4th*, 1867.

BENJAMIN WILSON & ELIZABETH WILSON
vs.
FRANK TRIBILCOCK. } Petition in equity.

And now this cause come on to be heard upon the demurrer of the defendant to the plaintiff's petition, and the same being seen and heard by the court, the same is overruled.

And now this cause come on to be heard upon the demurrer of the plaintiff to part of the defendant's answer to the original petition of pl'ff, and the same, being seen and heard, is sustained.

And now this cause comes on to be heard upon the pl'ff's motion to strike off the additional answer of def't to the pl'ff's petition, filed March 6th, 1866, and the same being seen, is overruled.

And this cause come on to be heard upon the demurrer of the plaintiff to the additional answer of the defendant, filed March 6th, 1866, and the same being seen and heard, is sustained.

(Signed at the end of the day's proceedings.)

H. H. TRIMBLE,
Judge.

26 STATE OF IOWA, *Van Buren County:*

In district court of said county.

BENJAMIN WILSON & ELIZABETH WILSON
vs.
FRANK TRIBILCOCK. } Specific performance.

To the clerk of said court:

You are hereby notified that said defendant appeals to the supreme court of said State, from the decision of the district court overruling his demurrer and rendering judgment on the petition; and that said appeal will be heard at the October term, 1867, of said court, to be held at Davenport, in said State.

SAMPLE & BALDWIN,
Att'ys for Def't.

I accept service of the foregoing notice this 31rst day of August, A. D. 1867.

J. A. MILLER, *Clerk D. C.*

STATE OF IOWA, *Van Buren County:*

In district court of said county.

BENJAMIN WILSON & ELIZABETH WILSON
vs.
FRANK TRIBILCOCK. } Specific performance.

To Benjamin Wilson & Elizabeth Wilson, plaintiffs in this case:

You are hereby notified that the defendant appeals from the decision of the district court of said county, overruling his demurrer and rendering judgment on your petition, to the supreme court of said
27 State, and that said appeal will be heard at the October term of said court 1867, to be held at Davenport, in said State.

SAMPLE & BALDWIN,
Att'ys for Def'ts.

I accept service of the foregoing notice by copy, Aug. 30, 1867.
BENJAMIN WILSON.

STATE OF IOWA, *Van Buren County, ss:*

I, John A. Miller, clerk of the district court in and for said county and State, do hereby certify that the foregoing is a true and complete copy of the petition of plaintiff, demurrer of defendants, record entry overruling demurrer, and original notice of appeal, as the same remain on file and of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, this 19th day of September, A. D. 1867.

[SEAL.] JOHN A. MILLER,
Clerk Dist. Court.

Clerk's fee for transcript, $3 85.

28 *Assignment of errors.*

Appeal from Van Buren district court.

BENJAMIN WILSON & ELIZABETH WILSON
vs.
FRANK TRIBILCOCK. } Specific performance.

The defendant makes the following assignment of errors in this case:

First. The district court erred in not sustaining defendant's demurrer to plaintiff's petition.

1st. On the point that the tender pleaded was not made at the maturity of and in compliance with the contract.

2d. On the point that tender could not be made after contract broken.

3d. On the point that plaintiff could not, in a court of equity, enforce specific performance of their broken contract.

Second. The district court erred in not sustaining defendants' demurrer.

1rst. On the point that the thing tendered was not that required by the contract, and not in compliance with it.

2d. On the point that the "legal-tender" law of Congress of 25th of February, 1862, is unconstitutional and void.

29 3d. On the point that there is no authority, State or national, to make anything but gold and silver a legal tender in payment of debts.

Third. The district court erred in not sustaining defendant's demurrer—

1rst. On the point that the treasurery note law of Feb. 25th, 1862, does not apply to this contract.

2d. On the point that such an application of the law is retrospective, and violates a contract made in compliance with law.

3d. On the point that such application of the law impairs the obligation of the contract, and violates the Constitution of the United States and of the State of Iowa.

Fourth. The district court erred in not sustaining def't's demurrer on the point that the tender pleaded in the petition, as made in "greenbacks," should have been equal in value to the demand of the contract.

Fifth. The district court erred in not sustaining defendant's demurrer to plaintiff's petition.

Sixth. The district court erred in overruling defendant's demurrer to plaintiff's petition.

Seventh. The district court erred in rendering judgment for plaintiff on his petition.

CHARLES BALDWIN,
Of Counsel for Defendant.

30 Be it remembered that at an argument term of the supreme court of the State of Iowa, begun and held at the city of Davenport, on Thursday, the 10th day of October, A. D. 1867, present the Hon. Ralph P. Lowe, C. J., Hon. John F. Dillon, Hon. Chester C. Cole, Hon. George G. Wright, judges, when the following among other proceedings were had and done, to wit:

FRIDAY, *October* 25th, 1867.

BENJAMIN WILSON & ELIZABETH WILSON *vs.* FRANK TRIBILCOCK, APPE'T. } Appeal from Van Buren County.

On this day this cause, coming up for hearing, is submitted to the consideration of the court, on written argument of counsel.

And at a regular term of said court, begun and held at the capitol, in the city of Des Moines, on Tuesday, the 3d day of December, A. D. 1867—present the Hon. Ralph P. Lowe, C. J.; Hon. John F. Dillon, Hon. Chester C. Cole, Hon. George G. Wright, judges—when the following among other proceedings were had & done, to wit:

31 BENJAMIN WILSON AND ELIZABETH WILSON *vs.* FRANK TRIBILCOCK, APPE'T. } Appeal from Van Buren County.

This cause having been heretofore submitted to the consideration of the court, and the court being now fully advised in the premises, find there is no error in the judgment of the district court, and file their written opinion. It is therefore considered by the court that the judgment of the court below be, and it hereby is, affirmed; that a writ of procedendo issue accordingly, and that the appellees have and recover off and from the appellant the costs in this behalf laid out and expended at this court, taxed at $, and that execution issue therefor.

(Signed at the end of the day's proceeding.)

R P. LOWE,
Chief Justice.

32 STATE OF IOWA, *Supreme Court, ss:*

I, C. Linderman, clerk of the supreme court of Iowa, do hereby certify that the foregoing is a full, true, and complete copy of the transcript in the case of Benjamin Wilson and Elizabeth Wilson, against Frank Tribilcock, as full, true, and complete as the same was filed in my office; also, a full, true, and complete copy of the assignment of errors and record entries of the supreme court in said cause, as full, true, and complete, as the same appear of record in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court this 12th day of May, A. D. 1870.

[SEAL.] C. LINDERMAN,

Clerk of the Supreme Court of Iowa.

Fees for copy of transcript, $5 25.

(Indorsement on cover:) No. 459. Frank Trebilcock, plaintiff in error, vs. Benjamin Wilson and Elizabeth Wilson. Iowa sup. court. Filed 16th June, 1870.

In the Supreme Court

OF THE UNITED STATES.

J. D. TREBILCOCK,
Administrator of the Estate of
FRANK TREBILCOCK,
Plff. in Error.
vs.
BENJAMIN WILSON and
ELIZABETH WILSON.

No. 459.

Error to the Supreme Court of the State of Iowa.

BRIEF OF COUNSEL FOR PLAINTIFF IN ERROR.

The question presented for the determination of the Court in this case is precisely the same as that decided by this Court in the case of Bronson *vs.* Rodes, 7 Wallace, 229, and in Butler *vs.* Horwitz, *ib.* 258. It is also within the principle settled by Hepburn *vs.* Griswold, 8 Wallace, 603.

In Bronson *vs.* Rodes, it was held that United States notes are not a legal tender in payment of a debt, which by contract, was made payable "in gold and silver coin, lawful money of the United States."

In Butler vs. Horwitz, the same principle was announced. The contract in that case being for payment of a certain rent "in gold and silver," the Court held that it could not be discharged by the tender of United States notes.

The contract sued on in the case at bar, was a note and mortgage for the payment of "nine hundred dollars, with ten per cent. interest from date, *payable in specie.*" (See Record, page 20, for copy of mortgage, which describes the note.)

There is manifestly no difference between a contract which by its terms is payable "in gold and silver," and one, which by its terms, is payable "in specie," for specie, according to Webster, signifies "coin:—copper, silver or gold, coined and used as a circulating medium of commerce."

Again, the case at bar is within the principle of the case of Hepburn vs. Griswold, *ante*, where it was held that the Legal Tender Acts of Congress, of 1862 and 1863, do not affect contracts entered into prior to their passage, and that therefore, all such contracts are payable in coin, and cannot be discharged by a tender of United States notes. The contract in the case at bar was entered into, as the record shows, on the 25th day of June, 1861.

We submit, therefore, that the decision of the Court below, was erroneous.

1. Because it held that a contract which by its express terms is payable in "specie," may be discharged by a tender of United States Notes; and

2. Because it held that a contract entered into prior to the passage of the Legal Tender Acts of 1862 and 1863 was within the provisions of those statutes making the notes of the United States, to be issued thereunder, a legal tender in the payment of debts.

In as much as the questions presented by the record in this case, are thus shown to be *stare decisis* in this Court, I forbear to discuss them, and submit the case, relying upon the authority of the three cases I have cited, either one of which, I deem conclusive of the whole case.

Respectfully Submitted.

GEO. W. McCRARY,

For Plff. in Error.

In the Supreme Court of the United States.

J. B. TREBILCOCK, Administrator, &c.,
Plff, in Error.

vs.

BENJAMIN WILSON and
ELIZABETH WILSON.

Error to the Supreme Court of the State of Iowa.

REPLY TO ARGUMENT OF COUNSEL FOR DEFENDANT IN ERROR.

In reply to so much of the argument of counsel for defendant in error as raises the question of the jurisdiction of this Court, I beg leave to submit the following suggestions:

It is only necessary that it should appear from the record that *some one* of the questions embraced in the 25th section of the Judiciary Act of 1789 was relied on by the plaintiff in error, and "that the right he claimed it gave him was denied to him by the State court." I refer to Furman *vs.* Nichol, 8 Wallace, 44, where the law is so clearly stated that I deem it unnecessary to cite other cases on the same point.

In the case at bar the record clearly shows that the plaintiff in error claimed his right to payment of the debt due him in specie under and by virtue of the Constitution of the United States, which he averred guaranteed this right to him, the Legal Tender Act to the contrary notwithstanding.

The case below was tried upon the law above, there being no dispute as to the facts. The only question was as to whether the tender of United States notes was sufficient. The demurrer interposed by plaintiff in error raised the constitutional question clearly and distinctly. I quote from the demurrer as follows:

"2d. The petition asks the aid of this court for the reason that petitioners tendered the amount of the note described in the petition in U. S. treas. notes. Such tender is not good. There is no law of this State or of the United States making anything but gold and silver a legal tender in discharge of the contract set out in the petition. This contract was entered into on the 25th day of June, 1861. The law of Congress making U. S. treas. notes a legal tender in payment of debts does not apply to this contract, because it was not enacted until long after this contract was entered into, to wit, on the 25th day of February, 1862. (To apply this law to this contract would be to make it retrospective law—a law impairing the obligation of contracts, *in violation of the Constitution of the United States* and of this State. The law of Feb. 25th, 1862, commonly called the legal-tender law, cannot be construed to apply to contracts entered into before its passage or in contemplation of its passage. Any other construction would make the law *repugnant to the Constitution of the U. S.* and of this State, repugnant to equity, repugnant to law, and repugnant to law and justice.)

"The law of Feb. 25th, 1862, will not bear so obnoxious a construction; therefore the tender relied upon in this case is not good."

(See Record, page 9.)

And again the Record shows that, in the Supreme Court of Iowa among the errors assigned were the following:

"Second. The district court erred in not sustaining defendants' demurrer.

1rst. On the point that the thing tendered was not that required by the contract, and not in compliance with it.

2d. On the point that the "legal-tender" law of Congress of 25th of February, 1862, *is unconstitutional and void.*

3d. On the point that there is no authority, State or national, to make anything but gold and silver a legal tender in payment of debts.

"Third. The district court erred in not sustaining defendant's demurrer—

1rst. On the point that the treasurery note law of Feb. 25th, 1862, does not apply to this contract.

2d. *On the point that such an application of the law is retrospective, and violates a contract made in compliance with law.*

3d. On the point that such application of the law *impairs the obligation of the contract, and violates the Constitution of the United States and of the State of Iowa.*

"Fourth. The district court erred in not sustaining def't's demurrer on the point that the tender pleaded in the petition, as made in "greenbacks," should have been equal in value to the demand of the contract.

"Fifth. The district court erred in not sustaining defendant's demurrer to plaintiff's petition.

"Sixth. The district court erred in overruling defendant's demurrer to plaintiff's petition.

"Seventh. The district court erred in rendering judgment for plaintiff on his petition."

(See Record, pages 11 and 12.)

In the case already cited (Furman *vs.* Nichol) this Court say: "If the record shows, either by express averment or by clear and necessary intendment, that the Constitutional provision did arise, and that the court below could not have reached the conclusion and judgment it did reach without applying it to the case in hand, then the jurisdiction of this Court attaches." It was manifestly impossible for the court below to have decided the demurrer, and rendered its decree, without deciding the constitutional question. I therefore submit:

1. That the plaintiff in error relied upon the provisions of the Constitution of the United States as guaranteeing certain rights to him.

2. That he raised the constitutional question and properly presented it to the court below by his pleading.

3. That there was therefore "drawn in question the construction" of certain clauses "of the constitution," and the decision was "against the title, right, privilege or exemption, specially set up or claimed" by him.

By reference to the report of this case, in the Supreme Court of Iowa (23 Iowa, p. 331) it will be seen that it was decided by that court upon the constitutional questions, and none other.

GEO. W. McCRARY,
For Plaintiff in Error.

In the Supreme Court of the United States.

J. D. TREBILCOCK,
Administrator of the Estate of
FRANK TREBILCOCK,
Plff. in Error.
vs.
BENJAMIN WILSON and
ELZABETH WILSON.

No. 227.

Error to the Supreme Court of the State of Iowa.

BRIEF OF COUNCIL FOR DEFENDANT IN ERROR.

The brief of counsel for plaintiff in error presents fairly to the Court some of the questions involved in the determination of this case.

We have no disposition to controvert the propositions therein stated, so far as they relate to the abstract points of law decided in the case. The somewhat difficult and complicated questions arising under the various constructions of the "Legal Tender Act" have already been presented and ably argued to this Court, and we do not deem it necessary to enter into their discussion here. Whatever benefit the defendants in error may be entitled to, under any further adjudication of this question in the cases now pending, we hope may be considered and awarded them in the examination of this case.

We submit, however, that this cause should be dismissed for want of jurisdiction of this Court.

The twenty-fifth section of the Judiciary Act of 1789, under which this writ of error is allowed, provides that this Court may review the judgment of the highest court of a State in certain cases therein specifically named. Among them are: "Where is drawn in question * * * a statute * * * of the United States and the decision is *against* the title, right, privilege, or exemption specially set up or claimed by either party under such * * * statute. * * * *"

The claim of the defendant in error in this case is based upon a statute of the United States; and the decision of the highest judicial tribunal in the State of Iowa, to which the writ of error herein was brought, was in favor of the validity of the statute of the United States and the "rights, privileges, and exemptions specially set up and claimed" under said statute.

This question is no new one in this Court. In the case of Gordon *vs.* Caldcleugh *et al*, 3 Cranch, 268. Mr. Chief-Justice Marshall delivering the opinion of the Court, says: "In the present case such of the defendants as were aliens filed a petition to remove this cause to the Federal Circuit Court, under the 12th section of the same act. The State court granted the prayer of the petition and ordered the cause to be removed. The decision, therefore, was not *against* the privilege claimed under the statute, and therefore this Court has no jurisdiction in this case."

In the case of Fulton *vs.* McAffee, 16 Mr. Peters, 149, Chief-Justice Taney, in delivering the opinion of the Court, says: "In order to give this Court jurisdiction under the 25th section of the act of 1789, it is not sufficient that the construction of the act of Congress * * * was drawn in question and decided by the State court, it must also appear that the decision was *against* the right claimed. * * * The power of the Supreme Court in this respect is carefully defined and restricted by the act of 1789, and it is our duty not to transcend the limits of the jurisdiction conferred upon it."

And the same learned Judge, in delivering the opinion of the

Court, in the case of Linton *vs.* Stanton, 12 Howard, 423, says: "We have no jurisdiction over the judgment of a State court upon a writ of error, except in the case specified in that section. And the jurisdiction of this Court is there limited with great care and in plain terms. It gives a writ of error to this Court where a party claims a right or exemption under a law of Congress and the decision is *against* the right claimed."

And in the case of Roosevelt *vs.* Meyer, 1 Wallace, 512, Mr. Justice Wayne, in delivering the opinion of the Court, says: "That as the validity of the act of the 25th February, 1862, was drawn in question, and the decision was in favor of it and of the rights set up by the defendant, that this Court has no jurisdiction to revise that judgment."

This case is identical in the point presented to the one now before the Court, and in accordance with the principles there determined, we ask that this writ be dismissed.

GEORGE B. CORKHILL,

For Defendant in Error.